

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0371
Gross Retail Tax—Responsible Officer Liability
For Tax Year 1996**

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ISSUE

I. Responsible Officer Liability—Gross Retail Tax

Authority: IC § 6-2.5-9-3 45 IAC 2.2-9-5

Indiana Department of State Revenue v. Safayan, 654 N.E.2d 270 (Ind. 1995).

Taxpayer protests the imposition of responsible officer liability for uncollected and nonremitted state gross retail taxes.

STATEMENT OF FACTS

Following receipt of a proposed assessment for uncollected and nonremitted gross retail taxes for tax year 1996, taxpayer submitted to the Department, in September of 2000, a letter protesting the assessment. Taxpayer stated she did not owe the taxes as she was not a responsible officer for the corporation. The Department sent five (5) letters to taxpayer, each one explaining the protest and appeals hearing procedures, offering several different mechanisms by which taxpayer could prove her case: in person, by telephone, or in writing. None of the letters were returned to the Department. Taxpayer did not respond. The Department sent a letter on November 15, 2001, setting a telephone hearing date, time, and phone number to call. Taxpayer neither requested an extension of time nor did she telephone the Department for her hearing on December 18, 2001. Accordingly, this Letter of Findings has been prepared based upon the information contained in the file and taxpayer's 2000 letter of protest. Additional facts will be added as necessary.

I. Responsible Officer Liability—Gross Retail Tax

DISCUSSION

Taxpayer protests the imposition of responsible officer liability for uncollected and nonremitted state gross retail taxes. The corporation alleged to be in arrears for gross retail tax for tax year 1996 was a small restaurant run by taxpayer and her father, a fact not mentioned in taxpayer's

letter of protest. Taxpayer's father, in financial trouble in 1996, asked one of his other employees to incorporate the business with his daughter. The incorporation occurred in June. No corporate meetings were ever held. Taxpayer did not sign the Articles of Incorporation as the registered agent for the corporation; the other employee (Ms. Y) did. In September, taxpayer's father purchased 300 shares of the corporation. Taxpayer did not sign the offer and acceptance form. The only place where taxpayer signed in her "official capacity" was on the September 1996 Waiver of Notice of the First Board of Director's meeting. The business closed in February of 1997.

IC § 9-2.5-9-3 states that an "individual who . . . is an employee, officer . . . and has a duty to remit state gross retail . . . taxes (as described in IC 6-2.5-3-2) to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state." 45 IAC 2.2-9-4's definition of "responsible officer" tracks the statutory language, and, in subsection (a), imposes the liability: "Businesses hold sales and use taxes in trust accounts for the state of Indiana. If businesses do not properly remit these taxes, responsible officers can be held personally liable for those trust fund taxes." Based on the information contained in the file, the Department cannot sustain taxpayer's protest. Other than the bare assertions contained in her Letter of Protest, taxpayer has not offered any further evidence as to why she should not be held responsible for the delinquent taxes.

FINDING

Taxpayer's protest is denied. No penalty was assessed.